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3 THE PROCEEDS OF THE ONTARIO LOTTERY CORP



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TRACING THE PROCEEDS OF THE ONTARIO LOTTERY CORPORATION

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Legislative Research Service

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BACKGROUND

Until the late 1960s, lotteries were prohibited in Canada under the gaming and betting provisions of Part V of the Criminal Code.¹ In 1969, however, the Code was amended to legalize lottery schemes conducted and managed by the federal and provincial governments, as well as by charitable and religious organizations, boards of fairs or exhibitions, and operators of amusement parks licenced by the provincial or municipal governments.²

Although the amendments were passed in 1969, the Ontario government did not make use of its newly acquired authority to establish a province-wide lottery until 1975. Until this time the province limited its involvement in the lottery business to the issuing of licences for the operation of private charitable lotteries. In 1975, legislation was passed establishing the Ontario Lottery Corporation as a crown corporation to be structured and operated as a private business. The Corporation, which is managed by a board of nine directors appointed by the Lieutenant Governor in Council, was given a mandate "to develop, undertake, organize, conduct and manage lottery schemes" on behalf of the government of Ontario and in conjunction with the federal government and other provincial governments.³ The first lottery introduced by the Corporation was Wintario in 1975; this lottery was followed by Lottario in 1978 and Instant Games in 1984.

Soon after the Ontario Lottery Corporation was established, its directors turned their attention to fulfilling the second part of its mandate, namely the creation of interprovincial lottery schemes. In 1976, Ontario, in conjunction with the provinces of Manitoba, Saskatchewan and British Columbia, established the Interprovincial Lottery Corporation (IPLC) and introduced Canada's first interprovincial lottery game, "The Provincial." (Alberta joined the IPLC later in 1976; Quebec and the Maritime provinces joined in 1978.) The Corporation was created as a holding company to be run by a board consisting of representatives from each participating lottery corporation. Each lottery corporation was given the responsibility for administering the game in its own province. Tickets would be purchased from the IPLC and marketed in the individual provinces with the proceeds from the sale of these tickets to remain in the provinces. Since the inception of "The Provincial" lottery in 1976, four additional games have been developed: Super Loto in 1980, Lotto 6/49 in 1982, Special '88 and Celebration '89.

DISTRIBUTION OF NET PROCEEDS OF THE CORPORATION

Under section 2 of the Ontario Lottery Corporation Act, "the Minister is responsible for the administration of this Act." The term "Minister" is defined as "the member of the Executive Council designated by the Lieutenant Governor in Council . . ."⁴ When the legislation was passed in 1975, the Ministry of Culture and Recreation was created and its Minister was designated as being responsible for the administration of the Ontario Lottery Corporation Act.

The relationship between the Minister of Culture and Recreation and the Ontario Lottery Corporation, as well as the responsibilities of both parties, were set out in a memorandum of understanding. This memorandum, which is re-ratified every three years, establishes the procedures for the routing of the net profits of the Corporation. Specifically, it states that:

the net profits of the Corporation shall be paid promptly by the Corporation through the Ministry of Culture and Recreation into the Consolidated Revenue Fund.⁵

The Ontario Lottery Corporation Act contains a similar but less specific provision in section 9. This section also prescribes the purposes for which the funds are to be allocated. It states that:

the net profits of the Corporation after provision for prizes and the payment of expenses of operations shall be paid into the Consolidated Revenue Fund at such times and in such manner as the Lieutenant Governor in Council may direct, to be available for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor.

This section was significant in that it was the first time that money in the Consolidated Revenue Fund was dedicated to specific purposes. This new concept was the subject of considerable debate when the legislation was introduced. It was stated at the time that:

this is quite a change from the historic view the government has taken, in that moneys put into the consolidated revenue fund do not necessarily go out in any proportion to the means by which they come in . . . the money was to be looked upon solely as a source of revenue and as one that bears no relationship to spending . . .⁶

... never have we considered that the segregation of funds was a permissible thing, nor that there was any particular legitimate levy against general funds - or particular funds for that matter.⁷

Originally all funds allocated from the profits of the Ontario Lottery Corporation in a given year went to the Ministry of Culture and Recreation to be distributed by the Minister in the form of grants. This method of allocation changed with the splitting of the Ministry of Culture and Recreation in 1981 (into the Ministry of Tourism and Recreation and the Ministry of Citizenship and Culture) and the recent splitting of the Ministry of Citizenship and Culture (into the Ministry of Culture and Communications and the Ministry of Citizenship). All three ministries are now entitled to request a share of the lottery revenues.

Although the legislation appears to be straightforward as regards the routing and allocation of lottery proceeds, there is in fact considerable confusion as to the meaning of the term "net profits of the Corporation." Because the Interprovincial Lottery Corporation was created subsequent to the enactment of the Ontario Lottery Corporation Act, the government has, until recently, taken the position that the phrase "net profits of the Corporation" only covered provincial lotteries operated by the Ontario Lottery Corporation in its own right. The provincial lotteries covered would include Wintario, Lottario and the Instant Games.

With respect to the Interprovincial Lottery Corporation:

each provincial lottery corporation administers the games in its own province, but the profits normally belong to the Interprovincial - and not the provincial - Lottery Corporation, thereby "by-passing" Section 9 (which talks about "the net profits of the (provincial) corporation" only).⁸

Due to the acceptance of this interpretation, it was necessary for Management Board of Cabinet to pass Orders in Council to provide for the routing and allocation of the province's share of the Interprovincial Lottery Corporation's proceeds. Originally, the monies were paid into the Consolidated Revenue Fund to be held in trust, "for such purposes as the Lieutenant Governor in Council may from time to time direct."⁹ Until 1986, the trust monies were allocated by Order in Council primarily for the purposes of health and health-related research and to the Ontario Trillium Foundation to be distributed to charitable organizations in Ontario.¹⁰ On May 26, 1986, the trusts were terminated and it was ordered that the monies be held in the

Consolidated Revenue Fund for the general purposes of the Province of Ontario.¹¹ At that time, there was \$429.9 million in non-dedicated proceeds held in trust. In prior years, the government had chosen not to allocate fully the available resources and, as a result, this considerable surplus developed. As of May 26, 1986, this unspent revenue became part of the general Consolidated Revenue Fund, no longer dedicated to any specific purpose.

In recent months, the Treasurer of Ontario has put forth a new position regarding the meaning of the term "net profits of the Corporation." It appears that an opinion was prepared by the Attorney General's office in mid-1987 in which the Attorney General reversed his original position adopted in 1976 and stated that "the proceeds of interprovincial lotteries should be treated as belonging to the net profits of the Ontario Lottery Corporation and subject to section 9 of the Act."¹² The Treasurer has acknowledged that in view of this opinion, interprovincial lottery proceeds have, for the past 12 years, been distributed pursuant to an inaccurate interpretation of section 9 of the Ontario Lottery Corporation Act.¹³ After reviewing the implications of this new interpretation, however, he concluded "that the Province's expenditure priorities could not justify the expenditure on recreational and cultural programs of the combined proceeds of the intra- and inter-provincial lotteries."¹⁴

It appears that this conclusion led the Treasurer to introduce in the Legislature "Bill 119, An Act to amend the Ontario Lottery Corporation Act."¹⁵ This legislation expands the purposes for which lottery revenues may be appropriated in a given year thereby enabling the government to conform with the 1987 legal opinion without unduly restricting its use of interprovincial lottery revenues.

In addition to the distinction between the net profits of the Ontario Lottery Corporation arising from the operation of provincial lottery games and those arising from the operation of interprovincial lottery games, there appears to be a distinction between the net proceeds generated by the Instant Games and those generated by Wintario and Lottario.¹⁶ Although the proceeds from the Instant Games are clearly governed by section 9 of the Ontario Lottery Corporation Act, as of April 1, 1988, no proceeds had been allocated for any purpose.

The current notational surplus with respect to the Instant Games is \$274 million.

BILL 119

"Bill 119, An Act to amend the Ontario Lottery Corporation Act" is concerned with the distribution of lottery proceeds in Ontario. The legislation received first reading on April 25, 1988 and is currently awaiting second reading. (The Bill is reproduced in Appendix A.) The following is a summary of its relevant provisions:

- It expands the purposes for which the net proceeds of the Ontario Lottery Corporation may be appropriated. The amendment provides that the proceeds are to continue to be available for appropriation by the Legislature for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities. In addition, the proceeds are to be available for the activities of the Ontario Trillium Foundation. (Since the interprovincial trusts were dissolved in 1986, the Trillium Foundation has received no funding from lottery proceeds.)
- It provides that funds not appropriated for the above-noted purposes in the fiscal year shall be applied to, and accounted for in the Public Accounts of Ontario as part of the money appropriated by the Legislature in the fiscal year for the operation of hospitals.
- The amendment provides that proceeds that have been paid into the Consolidated Revenue Fund before April 1, 1988 pursuant to section 9 of the legislation, and which have not been expended before that date, shall be treated as part of the money appropriated for the operation of hospitals in the fiscal year in which the amendment comes into force.

Effects of Bill 119

Net Profits of the Corporation

Based on the revised legal opinion recently issued by the Attorney General's office regarding the meaning of the phrase "net profits of the Corporation" as found in section 9 of the Ontario Lottery Corporation Act, it appears that the provisions of Bill 119 would be applicable to the revenue of the Ontario Lottery Corporation both in terms of its intraprovincial and interprovincial operations. According to the statistics published in the 1986/87 Annual Report of the Ontario Lottery Corporation, the net profits of the Corporation from the operation of interprovincial and intraprovincial lotteries in 1987 amounted to \$465 million.

Discretionary Appropriation

Although the legislation would still provide for the appropriation of lottery funds for physical fitness, sports, recreational and cultural activities, it is possible that there would be a reduction in the amount of money channelled into these areas. The language of the section is

discretionary in nature, meaning that the net proceeds of the Corporation only have to be available for appropriation for sports, cultural and recreational activities. There is no requirement that they actually be appropriated for these purposes.

In addition, if the funds are so appropriated, there is no minimum amount which must be authorized. If all of the net proceeds of the Corporation are not appropriated for culture, recreation, fitness and sports in a given year, they will no longer remain in the Consolidated Revenue Fund as a notational surplus still dedicated to these purposes and still available for appropriation in future years. Pursuant to the amendment, all unappropriated funds must be applied to, and form part of, the money appropriated by the Legislature for the operation of hospitals.

Disclosure

It is currently very difficult to trace the use of lottery proceeds. It has been suggested by the Ministry of Treasury and Economics that the combining of interprovincial and intraprovincial revenue will enable the public to trace the allocation of the proceeds with greater ease.¹⁷

Transitional Clause

Bill 119 provides that the net profits of the Corporation that have not been expended as of April 1, 1988, shall be treated as part of the money appropriated by the Legislature for the operation of hospitals. As of April 1, 1988, the Corporation claimed a notational surplus of \$369 million: \$95 million from Wintario and Lottario proceeds and \$274 million from the proceeds of the Instant Games.

FOOTNOTES

¹S.C. 1953-54, c. 51, s. 179.

²Criminal Law Amendment Act, 1968-69, S.C. 1985, c. 19, s. 31.

³The Ontario Lottery Corporation Act, S.O. 1974, c. 126, s. 7. (now cited as R.S.O. 1980, c. 344, s. 7.)

⁴The Ontario Lottery Corporation Act, R.S.O. 1980, c. 344, s. 1(d).

⁵Memorandum of Understanding Between the Minister of Culture and Recreation and the Ontario Lottery Corporation, s. 4(5), as amended.

⁶Ontario, Legislative Assembly, Hansard: Official Report of Debates, 29th Parliament, 4th Session (4 February 1975): 7235.

⁷*Ibid.*, p. 7239.

⁸Ontario Arts Council, Designation of Lottery Proceeds (Toronto: The Council, 1986), p. 4.

⁹No. O.C. 3034/76.

¹⁰No. O.C. 3034/76, 1138/85 and 2810/85.

¹¹No. O.C. 1447/86.

¹²Ontario, Ministry of Treasury and Economics, Office of the Treasurer of Ontario, letter to Mr. Floyd Laughren, MPP, Nickel Belt, 4 November 1988, p. 2.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵1st Session, 34th Legislature Ontario, 37 Eliz. II, 1988.

¹⁶Telephone conversation with Terry Hewak, Senior Economist, Fiscal Framework and Expenditure Forecasting, Ministry of Treasury and Economics, 7 June 1988.

¹⁷Telephone conversation with Mark McElwain, Assistant Director, Fiscal Framework and Expenditure Forecasting, Ministry of Treasury and Economics, 29 August 1988.

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APPENDIX

Bill 119

Bill 119

Government II

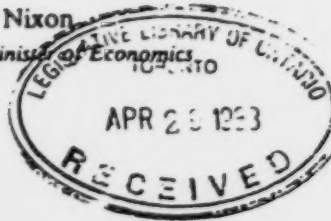
1ST SESSION, 34TH LEGISLATURE, ONTARIO

37 ELIZABETH II, 1988

Bill 119

An Act to amend the Ontario Lottery Corporation Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics



1st Reading April 25th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The Bill re-enacts section 9 to provide that the net profits of the Ontario Lottery Corporation that are paid into the Consolidated Revenue Fund are available to be appropriated by the Legislature for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor. This part of this section repeats the provision now in section 9 for the availability of the net profits of the Corporation. In addition, the amendment provides that the Corporation's net profits are to be available for the activities of the Ontario Trillium Foundation. Any part of the net profits of the Corporation in a fiscal year that is not appropriated for the foregoing purposes is to be treated as part of the appropriation made by the Legislature in the fiscal year for the operation of hospitals.

SECTION 2. Unexpended money paid into the Consolidated Revenue Fund under section 9 of the *Ontario Lottery Corporation Act* in previous years will now be treated as part of the money appropriated by the Legislature for the operation of hospitals.

CA2 ON
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Bill 119

1988

An Act to amend the
Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1. Section 9 of the *Ontario Lottery Corporation Act*, being
chapter 344 of the Revised Statutes of Ontario, 1980, is
repealed and the following substituted therefor:

9. The net profits of the Corporation after provision for prizes and the payment of expenses of operations shall be paid into the Consolidated Revenue Fund at such times and in such manner as the Lieutenant Governor in Council may direct, to be available for appropriation by the Legislature.

Net profits
of the
Corporation

- (a) for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor; and
- (b) for the activities of the Ontario Trillium Foundation,

and the net profits of the Corporation paid into the Consolidated Revenue Fund in a fiscal year of Ontario and not so appropriated in the fiscal year shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature in the fiscal year for the operation of hospitals.

2. The net profits of the Corporation that, pursuant to section 9 of the said Act, have been paid into the Consolidated Revenue Fund before the 1st day of April, 1988 and that have not been expended before that date shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature for the operation of hospitals in the fiscal year of Ontario in which this Act comes into force.

Transitional

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2 Bill 119 ONTARIO LOTTERY CORPORATION 1988

~~Comments-~~ 3. This Act comes into force on the day it receives Royal
~~(text)~~ Assent.

Short title 4. The short title of this Act is the *Ontario Lottery Corpora-*
tion Amendment Act, 1988.